



Statement on Passage of SJR 60

On November 7, 2017, Texas voters approved SJR 60, which amends the home equity lending provisions in Article XVI, Section 50 of the Texas Constitution.

Comment Period for Interpretation Amendments:

To implement SJR 60, the Finance Commission and Credit Union Commission have proposed interpretation amendments in 7 Tex. Admin. Code ch. 153. The amendments have been submitted for publication in the *Texas Register*.

The Joint Financial Regulatory Agencies will accept comments on the proposed amendments. The comment period will begin on November 24, 2017 (when the amendments are published in the *Texas Register*), and end on December 25 at 5:00 p.m. central time. Comments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov.

The agencies anticipate that the amendments will be presented for final adoption at the February and March 2018 meetings of the Finance Commission and Credit Union Commission, and that the amendments will be effective in late March 2018.

Compliance Requirements:

SJR 60 applies to all home equity loans made on or after January 1, 2018, and to all home equity loans refinanced on or after January 1. Lenders are responsible for ensuring that they comply with SJR 60 starting January 1. In particular, lenders must comply with the new 2% fee limitation and updated 12-day disclosure requirement for all loans made on or after January 1.

Some lenders have asked what interpretive guidance they can use between January 1 and the effective date of the interpretation amendments (anticipated to be late March). During this period, if a lender complies with the proposed interpretation amendments and provides required disclosures, the agencies will not take action against the lender for violating SJR 60's requirements. However, because the proposed interpretation amendments will not be effective during this period, they will not provide lenders with a safe harbor from civil litigation.

Some stakeholders have asked whether lenders may make home equity loans during the first 12 days of January 2018. SJR 60 takes effect on January 1, 2018, and it states that the amended requirements apply to all home equity loans made on or after January 1, 2018. In opinion DM-452 (1997), the Texas attorney general concluded that if a lender provided the required 12-day notice for home equity loans 12 days before January 1, 1998, and closed the loan on January 1, then the loan would not be enforceable under the constitution, because the disclosure was not "prescribed by" the constitutional amendment that went into effect on January 1, 1998. If this

same reasoning applies to SJR 60, this would require lenders to wait until January 1, 2018, to begin providing the updated disclosures under SJR 60, and to wait until January 13 at the earliest to begin originating loans. This would be the safest course if lenders wish to avoid civil litigation where homeowners argue that loans originated during the first 12 days of January 2018 are unenforceable.

Finalized Disclosures:

The agencies have posted finalized versions of the disclosures required under SJR 60, in both English and Spanish, to the Finance Commission's website. The amended disclosures are available at: <http://www.fc.texas.gov/homeinfo/homeinfo.html>.